

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re ACCREDO HEALTH, INC.
SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.

) Civil Action No. 03-2216-BBD

) CLASS ACTION

) LEAD PLAINTIFFS' MOTION *IN LIMINE*
) #20 TO PRECLUDE DEFENDANTS FROM
) INTRODUCING EVIDENCE OF
) UNRELATED EVENTS THAT OCCURRED
) AFTER THE END OF THE CLASS PERIOD

Lead Plaintiffs, Louisiana School Employees' Retirement System and Debra Swiman (together, "Lead Plaintiffs") and the Class of investors who purchased Accredo stock between June 16, 2002 and April 7, 2003, respectfully ask the Court to preclude Defendants from referring to, interrogating any witness concerning, commenting on, or introducing in any way evidence of unrelated events that occurred after the end of the Class Period because they are irrelevant to the issue of whether Defendants committed securities fraud, pursuant to Fed. R. Evid. 401 and are thus inadmissible pursuant to Fed. R. Evid. 402. Additionally, any such evidence could only serve to confuse and mislead the jury, unduly waste time and unfairly prejudice Lead Plaintiffs, and is thus inadmissible pursuant to Fed. R. Evid. 403.

On March 7, 2006, Magistrate Judge Pham issued a Report and Recommendation on Lead Plaintiffs' Motion for Class Certification, recommending that the Court grant the motion. *See* Docket No. 180. Therein, the Class Period was set as June 16, 2002 through April 7, 2003. *Id.* On April 19, 2006, this Court issued an Order, adopting the March 7, 2006 Report and Recommendation of Magistrate Judge Pham and granting Lead Plaintiffs' Motion for Class Certification. *See* Docket No. 191.

Lead Plaintiffs do not claim that Defendants' violation of the federal securities laws continued after the end of the Class Period. Thus, evidence of *unrelated events* occurring after April 7, 2003, is irrelevant at trial and is inadmissible under Fed. R. Evid. 401 and 402. Additionally, even assuming *arguendo* that evidence of events occurring after the end of the Class Period *and* unrelated to the alleged securities fraud is somehow relevant, its introduction would confuse and mislead the jury, constitute an undue waste of time and unfairly prejudice Lead Plaintiffs. Thus, it is inadmissible under Fed. R. Evid. 403.

The case law regarding the admissibility of extra-class evidence is clear in its guidance. Extra-class information is admissible *only* where it confirms what a defendant "should have known

during the class period [and] [a]ny information that sheds light on whether class period statements were false or materially misleading.” *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72-73 (2d Cir. 2001) (pre-class period data only relevant where it related to what defendants knew during the class period).

Lead Plaintiffs anticipate Defendants will attempt to introduce evidence of and make reference to Accredo’s acquisition by MedCo Health Solutions, Inc. on August 8, 2005 (well over two years after the close of the Class Period) and the purported post-Class Period collections and write-offs of SPS accounts receivable for the purposes of showing the adequacy of the SPS Division’s allowance for doubtful accounts and its compliance with generally accepted accounting principles (“GAAP”) during the Class Period. However, these *unrelated events* in no way address what Defendants “should have known during the class period” and do not shed light on “whether class period statements were false or materially misleading.” *Scholastic Corp.*, 252 F.3d at 72-73.

Indeed, this case concerns Accredo’s valuation of the SPS receivables as presented to investors in the Company’s financial statements between June 16, 2002 and April 7, 2003, which Defendants purportedly determined based on *historical information* existing at the time each Class Period balance sheet was prepared. Write-off and collection experience that occurred *after* the Class Period, by definition, was unknowable to Defendants at the time they issued Accredo’s Class Period financial results. These *future collection rates*, under different circumstances and conditions, are not relevant to Defendants’ Class Period financial statements and are thus inadmissible. Fed. R. Evid. 401 and 402. Moreover, introduction of this information will only serve to confuse and mislead the jury and is as such inadmissible. Fed R. Evid. 403. Accordingly, collections and write-offs of SPS accounts receivable that occurred *after* April 7, 2003 are irrelevant and should be excluded.

Finally, the controlling statute, 15 U.S.C. 78u-4(e), specifically allows for a 90-day “look back” period solely for the purpose of calculating the Class’ recoverable damages. Because of this, Lead Plaintiffs’ motion here does *not* seek to preclude the introduction of the *related* evidence concerning the price or movement of Accredo securities during this 90-day “look back” period.¹

Accordingly, Lead Plaintiffs respectfully ask that the Court issue an order precluding Defendants from referring to, interrogating any witness concerning, commenting on, or introducing in any way evidence of events unrelated to the claims and defenses in this action that occurred after the end of the Class Period, except for evidence concerning the price or movement of Accredo securities during the 90-day “look back” period dictated by 15 U.S.C. 78u-4(e).

DATED: September 8, 2008

Respectfully submitted,

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
MARK SOLOMON
TOR GRONBORG
JONAH H. GOLDSTEIN
DAVID W. MITCHELL
TRIG R. SMITH
NATHAN W. BEAR

s/ TOR GRONBORG
TOR GRONBORG

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

¹ Lead Plaintiffs have submitted a concurrent Motion *in Limine* to enforce this 90-day “look back” period. *See* Lead Plaintiffs’ Motion *in Limine* #19 to Preclude Defendants from Introducing Evidence of the Price or Movement of Accredo Securities After the Statutory 90-Day “Look Back” Period.

GLASSMAN, EDWARDS, WADE
& WYATT, P.C.
B.J. WADE, #5182
26 N. Second Street Building
Memphis, TN 38103
Telephone: 901/527-4673
901/521-0940 (fax)

Liaison Counsel

BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
BLAIR A. NICHOLAS
TIMOTHY A. DELANGE
BRETT M. MIDDLETON
MATTHEW P. JUBENVILLE
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Telephone: 858/793-0070
858/793-0323 (fax)

Co-Lead Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 8, 2008.

s/ TOR GRONBORG
TOR GRONBORG

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-3301
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail: torg@csgrr.com

Mailing Information for a Case 2:03-cv-02216-BBD-gbc

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **George E. Barrett**
gbarrett@barrettjohnston.com
- **Nathan W. Bear**
NBear@csgrr.com,stremblay@csgrr.com
- **Saul C. Belz**
sbelz@glankler.com,apospisil@glankler.com
- **Paul Kent Bramlett**
pknashlaw@aol.com
- **Linda F Burnsed**
lburnsed@cbslawyers.net
- **Karen M. Campbell**
kcampbell@appersoncrump.com
- **F. Guthrie Castle , Jr**
fgc@castle-law.com
- **Stanley M. Chernau**
s.chernau@chernau.com
- **Timothy A. DeLange**
timothyd@blbglaw.com,brettm@blbglaw.com,samj@blbglaw.com,kristinas@blbglaw.com,matthe
- **Amy Ferguson Dudek**
adudek@glankler.com,apospisil@glankler.com
- **Jef Feibelman**
jfeibelman@bpjlaw.com,cbiscoe@bpjlaw.com
- **Tor Gronborg**
torg@csgrr.com,e_file_sd@csgrr.com
- **Douglas F. Halijan**
dhalijan@bpjlaw.com,mmarshall@bpjlaw.com
- **Dixie W. Ishee**
woodcarltonishee@bellsouth.net

- **Matthew P. Jubenville**
matthewj@blbglaw.com
- **Emily C. Komlossy**
ekomlossy@faruqilaw.com
- **Quitman Robins Ledyard , II**
bledyard@borodandkramer.com
- **Brett M. Middleton**
brettm@blbglaw.com
- **Timothy L. Miles**
tmiles@barrettjohnston.com
- **David W. Mitchell**
davidm@csgrr.com
- **Blair N. Nicholas**
blairn@blbglaw.com
- **Russell F.A. Riviere**
russellr@blbglaw.com
- **Kevin Hunter Sharp**
ksharp@dsattorneys.com
- **Scott N. Sherman**
scott.sherman@alston.com
- **Gary K. Smith**
gsmith@appersoncrump.com,clunsford@appersoncrump.com,kcampbell@appersoncrump.com
- **Trig R. Smith**
trigs@csgrr.com
- **Mark D. Trainer**
mark.trainer@alston.com
- **B. J. Wade**
bwade@gewwlaw.com
- **Allison Wannamaker**
wannamakera@thomasonlaw.com
- **Kelly C. Wilcove**
kelly.wilcove@alston.com,valerie.nouman@alston.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Ramzi Abadou

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS, LLP
655 West Broadway
Suite 1900
San Diego, CA 92101

Guri Ademi

ADEMI & O'REILLY, LLP
3620 East Layton Ave.
Cudahy, WI 53110

Shpetim Ademi

ADEMI & O'REILLY, LLP
3620 East Layton Ave.
Cudahy, WI 53110

Lauren S. Antonino

CHITWOOD & HARLEY
1230 Peachtree St., N.E.
2900 Promenade II
Atlanta, GA 30309

Peter Q. Bassett

ALSTON & BIRD
1201 West Peachtree St.
Atlanta, GA 30309-3424

Javier Bleichmar

BERNSTEIN LITOWITZ BERGER & GROSSMAN
1285 Ave of the Americas
38th Floor
New York, NY 10019

Martin D. Chitwood

CHITWOOD HARLEY & HARNES LLP
1230 Peachtree St., N.E.
2900 Promenade II
Atlanta, GA 30309

Patricia A. Connell

ERNST & YOUNG
5 Times Square
New York, NY 10036-6530

Gregory M. Egleston

BERNSTEIN LIEBHARD & LIFSHITZ, LLP
10 East 40th Street
New York, NY 10016

Nadeem Faruqi

FARUQI & FARUQI, LLP
369 Lexington Avenue
10th Floor
New York, NY 10017

Mark C. Gardy

ABBEY GARDY, LLP
212 East 39th St.
New York, NY 10016

Carol V. Gilden

MUCH SHELIST FREED DENENBERG AMENT & RUBENSTEIN, P.C.
191 N. Wacker Dr.
Ste. 1800
Chicago, IL 60606-1615

Karen M. Hanson

LOCKRIDGE GRINDAL NAUEN, PLLP
100 Washington Ave., South
Ste. 2200
Minneapolis, MN 55401

Ronald B. Hauben

ERNST & YOUNG
5 Times Square
New York, NY 10036-6530

Marc S. Henzel

LAW OFFICES OF MARC S. HENZEL
273 Montgomery Ave.
Ste. 202
Bala Cynwyd, PA 19004

Fred Taylor Isquith

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
270 Madison Ave.
New York, NY 10016

, Esq

Douglas S. Johnston

BARRETT JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, TN 37201-1601

Nancy Kaboolian

ABBEY GARDY, LLP
212 East 39th St.
New York, NY 10016

William S. Lerach

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS, LLP
655 West Broadway
Suite 1900
San Diego, CA 92101

Mel E. Lifshitz

BERNSTEIN LIEBHARD & LIFSHITZ, LLP
10 East 40th Street
New York, NY 10016

Richard A. Lockridge

LOCKRIDGE GRINDAL NAUEN, PLLP
100 Washington Ave., South
Ste. 2200
Minneapolis, MN 55401

Douglas M McKeige

BERNSTEIN LITOWITZ BERGER & GROSSMAN
1285 Ave of the Americas
38th Floor
New York, NY 10019

Eitan Misulovin

BERNSTEIN LITOWITZ BERGER & GROSSMAN
1285 Ave of the Americas
38th Floor
New York, NY 10019

Michael E. Moskovitz

MUCH SHELIST FREED DENENBERG AMENT & RUBENSTEIN, P.C.
191 N. Wacker Dr.
Ste. 1800
Chicago, IL 60606-1615

Gregory M. Nespole

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
270 Madison Ave.
New York, NY 10016

, Esq**Darren J Robbins**

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS, LLP
655 W. Broadway
Ste. 1900
San Diego, CA 92101

Robert M. Roseman

SPECTOR ROSEMAN & KODROFF, P.C.
1818 Market St.
Ste. 2500
Philadelphia, PA 19103

David A. Rosenfeld

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS, LLP
200 Broadhollow Rd.
Ste. 406
Melville, NY 11747

Samuel H. Rudman

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS, LLP
200 Broadhollow Rd.
Ste. 406
Melville, NY 11747

Mark Solomon

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS, LLP
655 West Broadway
Suite 1900
San Diego, CA 92101

Marc A. Topaz

SCHIFFRIN BARROWAY TOPAZ & KESSLER, LLP
280 King of Prussia Road
Radnor, PA 19087